



City of Lowell - Law Department

375 Merrimack Street, 3rd Floor • Lowell MA 01852-5909
Tel: 978.674.4050 • Fax: 978.453.1510 • www.lowellma.gov

Christine P. O'Connor
City Solicitor

Rachel M. Brown
1st Assistant City Solicitor

Gary D. Gordon
John Richard Hucksam, Jr.
Adam LaGrassa
Stacie M. Moeser
Hannah Pappenheim
Elliott J. Veloso
Assistant City Solicitors

VIA E-MAIL

Andrew Stanton
Muckrock News
DEPT MR 63795
411A Highland Avenue
Somerville, MA 02144-2516

Re: Public Records Request

Dear Mr. Stanton,

I write in response to your request for public records request to the Lowell Police Department pursuant to the Massachusetts Public Records Law. You requested all communications from Atlantic Tactical, Inc., Vance Outdoors, Inc., and Jurek Brothers, Inc. from January 15, 2015 to November 14, 2018 regarding contracts for Taser devices.

Please be advised that, after review, the City has found no public records responsive to your request. The City has no contracts with Atlantic Tactical, Inc. Vance Outdoors, Inc., or Jurek Brothers, Inc. for the procurement or provision of Taser devices. However, the City did enter into a contract with Taser International, Inc. for the provision of Taser devices and related equipment within the timeframe you requested. Therefore, while it is not obligated to do so, the City is providing you a copy of this contract in response to your request. The City is also waiving all fees related to your request.

Please note that limited redactions have been applied to the document with respect to all social security and federal tax ID numbers, as such information constitutes private or personal information the disclosure of which would be an unwarranted invasion of privacy. *See* M.G.L. c. 4, §7 26(c).

This completes the City's response to your request. If you wish to appeal the City's response, you may petition the Supervisor of Records. The petition should be sent to the following address:

SECRETARY OF THE COMMONWEALTH
DIVISION OF PUBLIC RECORDS
1 ASHBURTON PLACE, RM. 1719
BOSTON, MA 02108

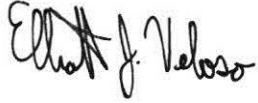
Andrew Stanton

July 30, 2019

Page 2

In addition, please be advised that you have the right to seek judicial review of an unfavorable decision by commencing a civil action in the Superior Court under M.G.L. c. 66, § 10A(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Elliott J. Veloso". The signature is stylized with a large, looped initial "E" and a cursive "V".

Elliott J. Veloso
Assistant City Solicitor

Encs.

This AGREEMENT made and entered into this Fifteenth day of October, 2015, by and between TASER INTERNATIONAL, INC., a Foreign Corporation duly organized by law and having a principal place of business at 17800 N 85th Street, Scottsdale, AZ 85255, hereinafter called "CONTRACTOR", and the CITY OF LOWELL, a municipal corporation duly established by law and located in the County of Middlesex and Commonwealth of Massachusetts, acting by and through its Chief Procurement Officer, hereinafter called "CITY" WITNESSETH: That

WHEREAS, the CITY issued its Invitation For Bids to purchase tasers and related equipment for the Police Department of the City of Lowell, as required by the CITY; and

WHEREAS, the CONTRACTOR represents that it is duly qualified in this field, and has agreed to perform such services for the City, when requested by the Chief Procurement Officer or his duly appointed designee; and

NOW, THEREFORE, IT IS AGREED by and between the parties hereto, as follows:

-1-

The CONTRACTOR will provide tasers and related equipment for the Police Department of the City of Lowell as required by the CITY, whenever requested by the Chief Procurement Officer, or his duly authorized representative, during the period commencing upon execution and terminating upon delivery.

-2-

The Invitation For Bids, the Specifications, and the Bid annexed hereto and marked "A", "B", and "C", respectively, are made a part of this Agreement.

-3-

Total payment for services under this Agreement shall not exceed the sum of ONE HUNDRED TWENTY FOUR THOUSAND FIVE HUNDRED FIFTY AND 03/100 (\$124,550.03) DOLLARS.

-4-

Such services under this Agreement will be performed as expeditiously as possible in a good and workmanlike manner under the supervision of, and to the satisfaction of the Chief Procurement Officer. The CONTRACTOR agrees that it will furnish all the necessary materials and do all other related work in connection therewith.

-5-

This Contract is subject to all laws of the Commonwealth, federal, state and local, which are applicable to this Contract, and it is presumed that the CONTRACTOR is cognizant thereof.

-6-

The CONTRACTOR agrees that its attention has been called to the provisions of the "Reserve System" Ordinance of the City of Lowell, which is now incorporated in the "The Code of Ordinances City of Lowell, Massachusetts", passed by the City Council on December 23, 2008 and Amendments Thereto and that each purchase order, so-called, issued in accordance with Section 28-32 of said Code to cover the services to be rendered under this Agreement shall be made a part hereof by reference. It is further agreed that no obligation shall be considered to have incurred under this Agreement unless and until a purchase order shall have been duly issued and approved.

And further, that the obligation incurred shall be limited to the amount set forth in the purchase order or purchase orders duly issued and approved.

-7-

Payment shall be made on the twentieth day of the month for all services provided during the preceding month, provided bills containing detailed information as to the services provided are filed in the Office of the Chief Procurement Officer on or before the first day of the month in which payment is to be made. Any payment under this Agreement shall not constitute or be deemed a waiver, relinquishment, release or abandonment of any claim which the City may have against the Contractor for breach of this Agreement.

-8-

The CONTRACTOR shall give its attention constantly to the faithful performance of the services and shall keep the same under its personal control and shall not assign nor sublet the services or any part thereof without the previous written consent of the City of Lowell and shall not, either legally or equitably, assign any of the moneys payable under this Agreement or its claim thereto unless by and with the written consent of the City of Lowell.

-9-

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

-10-

It is further agreed that the City of Lowell may terminate this Agreement at any time, with or without cause, upon written notice to the other party, sent by certified mail, to the usual place of business of the other party.

-11-

It is further agreed by the CONTRACTOR that, in the event the CITY is sued in a court of law or equity, or demand is made upon the CITY for payment of any damages arising out of the CONTRACTOR'S performance or non-performance of this Contract, then the CONTRACTOR, without reservation, shall indemnify and hold harmless the CITY against any and all claims arising out of the CONTRACTOR'S performance or non-performance of the Agreement.

-12-

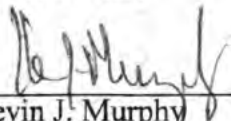
It is understood and agreed by the CITY and the CONTRACTOR that pursuant to the Code of the City of Lowell, Chapter 28, Article V, a Contract Performance Record Form must be completed on this contract by the Department Head or his/her designee, who is supervising this contract, and such Contract Performance Record Form must be submitted to the City Manager, City Auditor, and Purchasing Agent prior to release of final payment under this contract. If requested by the CONTRACTOR a copy of the Contract Performance Record Form shall be furnished to the CONTRACTOR.

-13-

The CONTRACTOR certifies that any and all taxes and municipal fees due and owing to the City of Lowell have been paid in full.

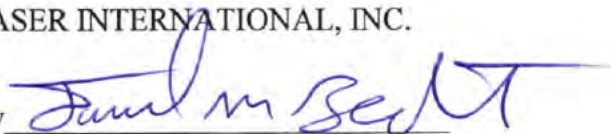
IN WITNESS WHEREOF, the said TASER INTERNATIONAL, INC., and the said CITY OF LOWELL have hereto and to a duplicate and triplicate hereof, caused their corporate seals to be affixed, if any, and these presents, together with said duplicate and triplicate, to be signed in their name and behalf by their duly authorized officers the day and year first above written.

APPROVED:



Kevin J. Murphy
City Manager

TASER INTERNATIONAL, INC.

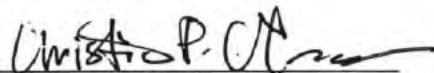
By 

Daniel M. Best

Federal I.D. or Social Sec. No.

██████████

APPROVED AS TO FORM:



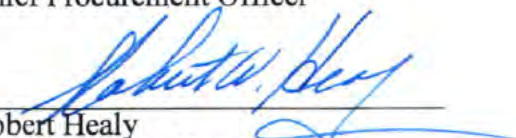
Christine P. O'Connor
City Solicitor

Date: 10/22/15

CITY OF LOWELL



P. Michael Vaughn
Chief Procurement Officer

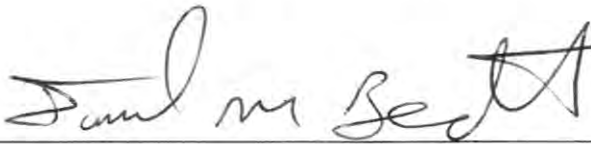


Robert Healy
Interim City Auditor

THE CITY OF LOWELL IS REQUIRED TO REPORT ALL ACTIVITY BY MINORITY BUSINESS ENTERPRISES (M.B.E.'s) AND WOMEN BUSINESS ENTERPRISES (W.B.E.'s).

CONTRACTORS ARE ENCOURAGED TO EMPLOY M.B.E.'s AND W.B.E.'s WHENEVER POSSIBLE, AND ALSO REPORT THEIR PARTICIPATION TO THE CONTRACT SOURCE.

COMPANY NAME TASER International, Inc.
(Print Company Name Here)

BY 

PLEASE INDICATE WHETHER OR NOT YOU ARE AN M.B.E. OR W.B.E. BY CHECKING ONE OF THE FOLLOWING:

☐ YES, I AM A CERTIFIED M.B.E. OR W.B.E.

☒ NO, I AM NOT AN M.B.E. OR W.B.E.

State Publications and Regulations

William Francis Galvin, Secretary of the Commonwealth

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The following Goods and Services submission was successfully received.

Planned date of publish is 9/28/2015

Awarding Agency

Agency Name and Address:	<u>Lowell, City of 375 Merrimack Street Lowell, MA 01852</u>
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Bid Number:	<u>IFB16-40</u>
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Contact Information

Name:	<u>P. Michael Vaughn</u>
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Title:	
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Phone:	<u>978-970-4110</u>
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Fax	
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Email Address:	<u>pmvaughn@lowellma.gov</u>
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	<u>Notify email address listed when final publish date assigned.</u>
--	----------------------------------------------------------------------

Address:	
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(if different from above)	
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Description

	<u>Purchase Tasers & related equipment</u>
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Contract Information

Estimated Rate		Duration	
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Bid Release Date		Release Time	
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Bid Deadline Date	<u>10/13/2015</u>	Deadline Time	<u>2:00pm</u>
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Additional Information	
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**CITY OF LOWELL
INVITATION FOR BIDS
TASERS AND RELATED
EQUIPMENT**

IFB NO.: 16-40

The City of Lowell is seeking bids to purchase Tasers and related equipment in strict accordance to the specification. Sealed bids will be received at the Office of the City of Lowell Purchasing Agent, City Hall, Room #60, 375 Merrimack St., Lowell, MA 01852 until 2:00 p.m. on October 13, 2015.

Information regarding this project may be obtained by contacting P. Michael Vaughn, Chief

Procurement Officer/
Purchasing Agent, City of Lowell, (978) 970-4110, at the above address, Email pmvaughn@lowellma.gov or from the City of Lowell website at www.lowellma.gov/purchasing

September 28, 2015

133-32

A

BASIS OF AWARD

IFB 16-40

In accordance with the Specifications, and under the terms and conditions mentioned above, I (We) hereby offer to furnish and deliver to departments described above the following materials which shall in all respects meet the attached specifications, as required during the terms mentioned above for the following prices:

QTY	ITEM #	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
60	22003	Handle, Yellow Class III X2	\$1,042.31	\$62,538.60
70	22012	TPPM Battery Pack X2/X26P	\$55.15	\$3,860.50
170	22501	Holster Blackhawk X2 Right	\$66.64	\$11,328.80
30	22504	Holster Blackhawk X2 Left	\$66.64	\$1,999.20
600	22150	Cartridge Performance Smart 15'	\$29.85	\$17,910.00
1	22013	Kit, Dataport Download USB	\$166.73	\$166.73
240	22151	Cartridge Performance Smart 25'	\$31.88	\$7,651.20
60	22014	4 Year X2 Warranty	\$318.25	\$19,095.00

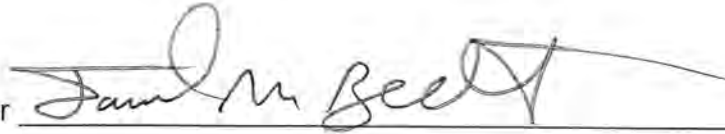
GRAND TOTAL \$124,550.03

IN WORDS One hundred twenty four thousand, five hundred and fifty dollars and three cents.

DELIVERY IN DAYS 14 to 45

MANUFACTURER TASER International, Inc.

Signature of Bidder



Print Name and Title Dan Behrendt, Chief Financial Officer

Company Name and Address TASER International, Inc.

17800 N. 85th St., Scottsdale, AZ 85255


Telephone Number 800/978-2737

Email Address Contracts@taser.com

CONFLICT OF INTEREST CERTIFICATION

The undersigned hereby certifies that the Bidder shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with the City's Conflict of Interest terms stated in Article 33 of these Contract Documents.

BIDDER'S NAME: TASER International, Inc. by Dan Behrendt

AUTHORIZED SIGNATURE: 

TITLE: Chief Financial Officer

DATE: 10/9/15

ACKNOWLEDGEMENT OF ADDENDA

The Bidder acknowledges all addenda.

ADDENDA NUMBER

DATE ISSUED

AFFIDAVIT OF NON-COLLUSION

It shall be understood that any bid submitted to the City is made without collusion with any other bidder submitting a bid on the same commodity/service, and is in all respects fair and without fraud.

STATE OF: AZDate: 10/9/15COUNTY OF: MaricopaS.S.: Tax ID - [REDACTED]

The undersigned being duly sworn, deposes and says that he/she is the

Chief Financial Officer

(Sole Owner; Partner, President, Treasurer,
or Other Duty Authorized Official of a Corporation)

of TASER International, Inc.

(Name of Firm as Appearing in Submitted Proposal)

and works in Scottsdale, AZ

(City/Town)

and certifies under penalties of perjury that this proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

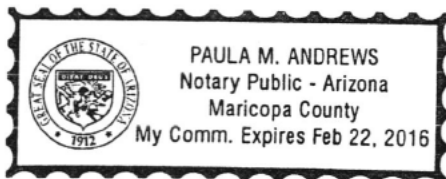
[Signature]

Chief Financial Officer

(Signature and Title of Person Making Affidavit)

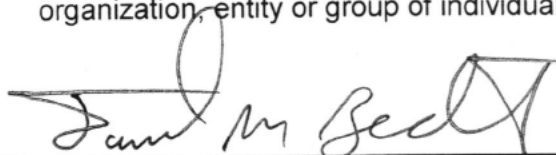
Sworn to before me this 9th day of Oct, 20 15

Notary Public: Paula M. Andrews My commission expires: 2-22-16



IN WITNESS WHEREOF, the undersigned certifies, under the pains and penalties of perjury that:

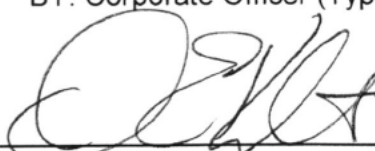
1. It is in compliance with all of the provisions, and shall remain in compliance with the provisions for the life of any Contract resulting from this solicitation. That the bidder is qualified to perform any such Contract and possess, or shall obtain, all requisite licenses and permits to complete performance; shall maintain all unemployment, workers' compensation, professional and personal liability insurance policies sufficient to cover its performance under any such Contract; and shall comply with relevant prevailing wage rates and unemployment laws.
2. To the best of its knowledge and belief has paid all local taxes, tax titles, utilities, motor vehicle excise taxes, water and wastewater bills to the City of Lowell as required by law.
3. To the best of its knowledge and belief has filed all State tax returns and paid all State taxes required by law, and has complied with reporting of employees and contractors, and withholding and remitting of child support (MGL c.62C, s.49A).
4. Pursuant to MGL c.30B s.10 (or c.30 s.39M), this bid or proposal has been made in good faith and without collusion or fraud with any other person. As used in this paragraph, "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.



Signature of Person Signing Bid or Proposal

Dan Behrendt


BY: Corporate Officer (Type/Print)



BY: Corporate Officer (Sign)

TASER International, Inc.

Corporate Name (Full Business Name)


 Social Security or Federal Tax ID#
 Business (DBA)

DE

State of Incorporation/City of

Registration

Approval of a contract, or other agreement, will not be granted unless the applicant signs this certification form. You're Social Security number or Federal Tax Identification number will be furnished to the Massachusetts Department of Revenue (DOR) to determine whether you have met tax filing or tax payment obligations. The City of Lowell is required to furnish a list to the DOR at the end of its fiscal year, showing the vendors to whom more than \$5,000 is paid during the twelve months, ending June 30. Providers who fail to correct their non-filing or delinquency, will not have a contract or other agreement issued or extended. This request is made under the authority of Massachusetts General Laws, c.62C, s.49A.



TASER
Protect Life

17800 N. 85th St.
Scottsdale, AZ
85255-9603

Phone: (480) 991-0797 • (800) 978-2737
Fax: (480) 991-0791
www.TASER.com

October 8, 2015

City of Lowell Purchasing Department
City Hall
375 Merrimack Street, Room 60
Lowell, Massachusetts 01852
Attn: P. Michael Vaughn

RE: PURCHASE TASERS & RELATED EQUIPMENT IFB

Dear Mr. Vaughn:

Below please find TASER International Inc.'s (TASER) requested clarifications to the above-referenced IFB. Although TASER's response is contingent upon the following requests, TASER is open to further discussions regarding requested exceptions. TASER reserves the right to negotiate the terms and conditions attached to the IFB.

1. Addition of TASER's Terms and Conditions.

TASER requests that the following documents be incorporated into the final contract award. TASER agrees to negotiate with the City on these terms and conditions, and if any of TASER's terms and conditions conflict with the negotiated terms and conditions of the contract documents, **the City's contract document will control:**

- TASER's Sales Terms and Conditions for Direct Sales
- TASER's Warranty Document

2. PURCHASE TASERS & RELATED EQUIPMENT IFB: Article 31. Indemnification of the City.

TASER respectfully requests the language of this section be amended as follows:

The Contractor agrees to indemnify, save harmless, and defend the City and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings ("Claims"), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims ("Liabilities") for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the negligence, willful misconduct, or product defects of the Contractor or its employees, subcontractors or agents.

If you have any questions or concerns, please do not hesitate to contact me.

Best Regards,

Bobby Driscoll
Director of Sales Operations
bobby@taser.com | 480.502.6257

**TASER International, Inc.'s Hardware Warranty, Limitations and Release for
Law Enforcement CEW Products and On-Officer Cameras (U.S. and Canada)
(Effective March 12, 2014)**

The following TASER International, Inc. (TASER) warranty provisions are applicable on all sales or transfers of TASER Law Enforcement Products, including conducted electrical weapons (CEWs), on-officer audio/video cameras and related accessories.¹ The term "Purchaser" means any purchaser, possessor, or user of the TASER brand products. BY USING THE TASER PRODUCT YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THE WARRANTY AS SET OUT BELOW.

Manufacturer's Limited Warranty²

TASER warrants that its Law Enforcement Hardware Products³ are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly.⁴ TASER-Manufactured Accessories⁵ are covered under a limited 90-DAY warranty from the date of receipt. Non-TASER manufactured accessories are covered under the manufacturer's warranty. In the event any country or state imposes a longer express warranty term than that described in this warranty document, then the country or state's term will take precedence.

If a valid warranty claim is received by TASER within the warranty period, TASER agrees to repair or replace the product which TASER determines in its sole discretion to be defective under normal use, as defined in the product instructions. TASER's sole responsibility under this warranty is to either repair

or replace with the same or like product, at TASER's option.

Optional Extended Hardware Warranty for AXON flex, AXON body, ETM, EVIDENCE.com Dock, TASER CAM HD, X2, X26, and X26P

The optional extended warranty, when available, may only be purchased at the point of sale of the product. The extended warranty runs from the date of receipt of the extended warranty through the balance of the 1-year limited warranty plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. Purchaser may not buy more than one extended warranty for any one specific product. The extended warranty does not cover user-removable battery replacement, abuse, intentional or deliberate damage to the product, or force majeure during the extended warranty period.⁶ For customers who purchase an extended warranty TASER warrants it will repair or replace the TASER product, which fails to function for any reason not excluded by this warranty, during the extended warranty period with the same or like product, at TASER's option. Purchaser may not buy a new extended warranty for any replacement or repaired product which is replaced or repaired under the extended warranty.

Exclusions and Limitations

A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or

repair, whichever period is longer. When a product or part is exchanged, any replacement item becomes Purchaser's property and the replaced item becomes TASER's property. After the warranty period, TASER may, at its sole option, repair or replace a TASER product for a fee. A paid for out-of-warranty repair or replacement product comes with the manufacturer's limited warranty.

This warranty does not apply and TASER will not be responsible for any loss, data loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the product's use; (b) damage caused by use with non-TASER products or from the use of cartridges, batteries or other parts, components or accessories that are not manufactured or recommended by TASER; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a product or part that has been repaired or modified by persons other than TASER authorized personnel or without the written permission of TASER; or (e) if any TASER serial number has been removed or defaced.

To the extent permitted by law, this warranty and the remedies set forth above are exclusive and in lieu of all other warranties, remedies, and conditions, whether oral or written, statutory, express or implied, as permitted by applicable law. TASER specifically disclaims any and all statutory or implied warranties, including

¹ The warranty does not apply to software or services offered for, by, on, or through the TASER.com or EVIDENCE.com websites. This warranty only applies to hardware.

² A product's estimated useful life or expiration date may not be the product's warranty expiration date.

³ TASER Law Enforcement Hardware Products include TASER X2, X26, and X26P CEWs, Simulation Handles assembled by TASER, TASER CAM and TASER CAM HD recorders, CEW cartridges, and Smart cartridges, AXON flex camera (including

the universal magnetic clip), AXON body camera, Evidence Transfer Managers (ETMs), and EVIDENCE.com Docks.

⁴ Broken blast doors are not covered under TASER's limited warranty.

⁵ TASER-Manufactured Accessories include, but are not limited to: batteries; battery chargers; carrying cases; cables; docking bars; USB data download kits; headbands; holsters; mounts; DPM, XDPM, CDPM, PPM, TPPM, APPM, XPPM, TPM, and

Shockwave Power Magazine modules; and the X-Rail mounting system.

⁶ The manufacturer's limited warranty provides coverage for AXON flex camera, AXON flex controller or AXON body batteries that have failed or are exhibiting diminished capacity as result of a manufacturing defect. Under the extended warranty, replacement of the AXON flex camera battery is covered, but replacement of the AXON flex controller battery and AXON body battery are not covered.

**TASER International, Inc.'s Hardware Warranty, Limitations and Release for
Law Enforcement CEW Products and On-Officer Cameras (U.S. and Canada)
(Effective March 12, 2014)**

without limitation, warranties of merchantability, design, fitness for a particular purpose, arising from a course of dealing, usage or trade practice, warranties against hidden or latent defects, and warranties against patent infringement. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this warranty document.

The remedies provided for in the above warranty are expressly in lieu of any other liability TASER may have. TASER's cumulative liability to any party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any TASER product will not exceed the purchase price paid to TASER for the product. In no event will TASER be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory, even if TASER has been advised of the possibility of those damages or if those damages could have been reasonably foreseen, and notwithstanding any failure of essential purpose of any exclusive remedy provided in this warranty. Some local laws do not allow for the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you. Any repair to or replacement of any product under this warranty may result in a loss of programs or data.

Release

Purchaser agrees to release TASER from any and all liability arising out of the deployment, use, or misuse of the TASER product, including

any claims for damages and personal injuries. Purchaser agrees to assume all risks of loss and all liability for any damages and personal injury which may result from the deployment, use, or misuse of the TASER product. TASER is not liable for the failure of the TASER product to perform and TASER is not liable for any claims made by a third party or by Purchaser for or on behalf of a third party.

Purchaser Responsibilities and Product Registration

Purchaser should update product software and/or firmware as they become available through TASER, as well as perform periodic data uploads to EVIDENCE.com services or download/backup copies of the information, data, and/or video contained on the TASER product storage media to protect the contents and as a precaution against possible operational failures.

To register your TASER product, please go to www.taser.com/register. Registration of your product allows TASER to contact you with important product notifications and provides a record in case of product loss or theft. Registration is voluntary and failure to register will not diminish your limited warranty rights.

Warranty Repair Procedure

For warranty return and repair procedures, including troubleshooting guides, please go to TASER's websites www.taser.com/support or www.evidence.com, as indicated in the appropriate product user manual or quick start guide.

Failure to provide the required information for the returned product will delay the return of the repaired or replaced item. If Purchaser fails to provide the required information, including the RMA number, then TASER assumes no liability for loss of the returned product. Any TASER product that has not

been paid for, when required, or for which the required information has not been provided during a period of 90 days after receipt of the TASER product by TASER is deemed abandoned and TASER may dispose of the TASER product without any liability, compensation, or further notification to Purchaser.

Before you deliver your product for warranty service, it is your responsibility to upload the data contained in the product to the EVIDENCE.com services or download the product and keep a separate backup copy of the contents. During warranty service the contents of the storage media will be deleted and reformatted. TASER is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the product services. The product will be returned to you configured as originally purchased, subject to applicable firmware updates. Recovery and reinstallation of software programs and user data are not covered under this warranty. *If you require attempted data recovery this must be specifically requested (and a fee may be required) or the contents of your product will be deleted and the storage media reformatted in the course of warranty service.*

General

This warranty supersedes any prior, contrary, or additional representations, whether written or oral. This warranty is TASER's only hardware warranty and may not be changed or enlarged by any agent, employee, distributor, dealer, or other person. This warranty, including any extended warranty, is non-transferable.

AXON flex™, Shockwave™, Smart™, TASER CAM™, X2™, X26™, X26P™, X-Rail™, 'Protect Life' and 'Protect Truth' are trademarks of TASER International, Inc., and TASER®, AXON® and Ⓢ are registered trademarks of TASER International, Inc., registered in the U.S. All rights reserved. © 2014 TASER International, Inc.

Title: TASER International, Inc.'s Sales Terms and Conditions – Direct Sales to End User Purchasers
Department: Legal
Version: 7.0
Release Date: 1/14/2015

**TASER International, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers
(Effective January 14, 2015)**

These Sales Terms and Conditions apply to your purchase of all TASER International, Inc. ("TASER," "we," "us," or "our") products and services purchased directly from us. Products and services sold by us are expressly subject to and conditioned upon the terms and conditions set forth below. By signing a quote, issuing a purchase order, or accepting delivery of the product or service, you accept and are bound to these Sales Terms and Conditions. Any different or additional terms set forth by you, whether in your purchase order or another communication, are expressly objected to and will not be binding on us.

Return Policies. All sales are final and no refunds or exchanges are allowed, except as provided by state or federal law and as specified below for TASER® Citizen Products.

Exchanges for TASER Citizen Products. The citizen model products that are unopened and still in their sealed package may be returned or exchanged within 15 days from the date of receipt of the product for a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees. Any product returned to TASER without prior authorization from us will be considered an unauthorized return, and you will not receive credit for the product and we will not ship the product back to you. Unless the product is defective or the return is a direct result of our error, we may charge a restocking fee of up to 15% of the purchase price paid, plus any applicable sales tax.

To return a citizen model product, you must first go to our website, www.TASER.com and obtain a Return Material Authorization ("RMA") number before the end of the applicable return period. We will not accept returns without an RMA number. See the Product Warranty, www.TASER.com, or contact us at 800.978.2737 (+1.480.905.2000 for International callers) for information on how to obtain an RMA number. You must ship the product to us within 5 days of the date that we issue the RMA number as follows:

- in the original product packaging, in as-new condition, along with any media, documentation, and any other items that were included in your original shipment;
- at your expense and insured (if you return the product uninsured then you accept the risk of loss or damage during shipment);
- with the RMA number clearly marked on the outside of the return packaging;
- with proof of purchase of the product (receipt, purchase order, or invoice); and
- with your name, address, and phone number of where to send the exchange item or the product credit or refund.

Upon receipt of your return, we will issue a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees. For partial returns, your credit may be less than the invoice or individual component price due to bundled or promotional pricing or any unadvertised discounts or concessions. If you fail to follow the return or exchange instructions and policies provided by us, we are not responsible for product that is lost, damaged, modified, or otherwise processed for disposal or resale.

Quotes. A quotation is an offer to sell, is valid only for the products and services listed on the quote at the prices listed on the quote, and is subject to these Sales Terms and Conditions, all of which are

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deemed incorporated into the quote. The quote from TASER contains the entire terms and conditions associated with the transaction. You may accept a quotation by signing the quote, issuing a purchase order, or other writing expressing your intention to be bound. Any terms, conditions or writing within your purchase order or other writing addressing the subject matter of the transaction, will be for your internal purposes only and the terms and conditions contained therein will have no force or effect. If you have not signed a quote from TASER, then your order is subject to cancellation by us, in our sole discretion. We are not responsible for pricing, typographical, or other errors in any offer by us and reserve the right to cancel any orders resulting from such errors.

Prices. The price of the products and services are set forth in the quote specifically provided to you (if no quote was provided then the price is that set forth on our current price list or www.TASER.com). Prices do not include taxes, shipping, handling, insurance or other similar charges; any such charges will be added to the price or separately invoiced unless otherwise expressly indicated at the time of sale.

Payment Terms. Invoices are due and payable within the time period noted on your invoice, measured from the date of the invoice. We may invoice parts of an order separately. Where no credit has been granted to you or where credit has been withdrawn (in our absolute discretion) or for international sales, payment is required in full prior to shipment. Payment must be by credit card, wire transfer, or some other prearranged payment method. If we have reasonable grounds to believe that you will fail to comply with the payment terms or with the agreed credit terms, we are entitled to postpone or to refuse delivery of an order.

Taxes. Unless you provide us with a valid and correct tax exemption certificate applicable to your purchase and ship-to location, you are responsible for sales and other taxes associated with your order.

Shipping; Title; Risk of Loss. We reserve the right to make partial shipments and products may ship from multiple locations. All shipments are E.X.W. via common carrier, unless otherwise specified, and title and risk of loss pass to you upon delivery to the common carrier by TASER. You are responsible for all freight charges. Any loss or damage that occurs during shipment is your responsibility. Shipping dates are estimates only. Delivery is typically 2–6 weeks after receipt of order or payment.

Excusable delays. We will use commercially reasonable efforts to deliver all products and services ordered by you as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond our reasonable control, including but not limited to force majeure, fire, labor disturbances, riots, accidents, or inability to obtain necessary materials or components, we have the right, in our sole discretion and upon oral or written notice to you, to delay or terminate the delivery.

Not For Resale or Export. Shipping of some of our products out of the United States is restricted by U.S. federal law and neither the product nor its technology can be exported out of the U.S. without a validated export license issued by the U.S. Department of Commerce and a signed BIS-711 on file with us.

Regulations and Restrictions. You agree to comply with all applicable laws, codes and license requirements, and controls of the United States and other applicable jurisdictions in connection with the use of TASER products and services including your acceptance of responsibility for the payment of any relevant taxes or duties. Please go to our website (www.TASER.com) or contact our Customer Service

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Department for a list of known regulations and restrictions regarding the sale, possession, and use of TASER CEW products. You are responsible for understanding and verifying all local laws, regulations, and restrictions.

Warranty Coverage. Our current warranty provisions, warranty exclusions, release, and any limitations of liability located at www.TASER.com are also applicable to your purchase.

Product Warnings. See our website at www.TASER.com for the most current product warnings.

Proprietary Information. You agree that we have and claim various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute our products and services, and that you will not directly or indirectly cause any proprietary rights to be violated.


Design Changes. We reserve the right to make changes in design of any of our products and services without incurring any obligation to notify you or to make the same change to products and services previously purchased.

Severable Provisions. If any provision of these Sales Terms and Conditions is found by a court of competent jurisdiction to be invalid or unenforceable, then the remainder will have their full force and effect and the invalid provision will be modified or partially enforced by the court to the maximum extent permitted by law to effectuate the purpose of this agreement.

No Assignment. You may not assign this agreement nor any related order and you may not delegate your duties under this agreement without our prior written consent which will not be unreasonably withheld. We may assign this agreement without your consent.

Entire Agreement. These Sales Terms and Conditions, along with the quote, sales order acknowledgement, and the applicable product warranty, license and service agreement(s), constitute the entire agreement between the parties. These Sales Terms and Conditions supersede and replace any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this agreement. Any prior or extrinsic representations or agreements, with the exception of the product warranty, any service and license agreement(s), are intended to be discharged or nullified.

Governing Law. The laws of the state where you are physically located, without reference to conflict of law rules, govern these Sales Terms and Conditions and any dispute of any sort that might arise between the parties. The United Nations Convention for the International Sale of Goods does not apply to these Sales Terms and Conditions.

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City of Lowell
Purchasing Department
City Hall
375 Merrimack Street, Room 60
Lowell, Massachusetts 01852

Project Name: **Purchase Tasers & Related Equipment**

IFB No.: **16-40**
Date: **September 28, 2015**
Buyer: **P. Michael Vaughn**
Tel. No.: **978-970-4110**
Fax No.: **978-970-4114**
Email: **pmvaughn@lowellma.gov**

The City of Lowell is soliciting bids from authorized distributors and qualified suppliers to purchase Tasers and related equipment, in strict accordance to the attached specification. To assist the City in this effort, the City is issuing this Invitation for Bid ("IFB") to solicit responses from qualified Bidders who can meet the project requirements stated herein.

DUE DATE

Sealed bids will be publicly opened on: **October 13, 2015** at City Hall in the Purchasing Department, Room 60, 375 Merrimack Street, Lowell, MA 01852, at **2:00 PM**, EST/EDST, for the work described herein. **BIDDERS ARE REQUIRED TO SUBMIT A BID INCLUDING ALL BID FORMS CONTAINED IN THIS PACKAGE. DO NOT REMOVE PAGES.**

CLARIFICATIONS OF SPECIFICATIONS

Any request for clarification to, or relief from, the specifications, must be submitted in writing to the attention of the assigned Buyer at the Purchasing Department's office no later than **five (5) business days prior to the Due Date.**

Should the City make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Bidders in the form of written Addenda. No officer, agent, or employee of the City is authorized to amend any provision contained in this IFB, including the specifications, unless such amendment is issued as an Addendum and sent to all Bidders in accordance with this Section (Clarification of Specifications). Bidder is required to acknowledge all addenda. (**attached – form B**).

APPROPRIATION CONTINGENCY

If the City fails to appropriate operating funds, or if funds are not otherwise made available for the continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated. The City's fiscal year begins July 1st.

CONDITIONS, REQUIREMENTS AND COVENANTS PROJECT DOCUMENTS

Article 1. Acceptance or Rejection of Bids

The Purchasing Agent reserves the right to reject any or all bids and to accept any bid, in whole or in part which it considers to serve the best interest of the City of Lowell.

Any bid which is not according to prescribed form, not properly signed, or otherwise contrary to instructions may be rejected by the Purchasing Department.

All bids received by the Purchasing Department will be stamped in when received and said stamp shall indicate the time and date of receipt. All bids received will be publicly opened and read in the Purchasing Department at date and time shown above.

NO BID WILL BE ACCEPTED AFTER TIME AND DATE SPECIFIED.

Article 2. Identification of Sealed Envelopes

Bids shall be placed in sealed envelopes that are marked on the outside with the name and address of the bidder, the title of the project and the scheduled date for the opening of bids. No responsibility will be attached to the City of Lowell or the Purchasing Department for the premature opening of any bid that is not properly identified.

Article 3. Certified Check and/or Performance/Payment Bond

A certified check made payable to the "City of Lowell" in the amount of 0% must accompany this bid. **Bid bonds** are acceptable.

A **performance bond** in the amount of 0% of the total dollar award is required prior to contract execution.

A **payment bond** in the amount of 0% of the total dollar award is required prior to contract execution.

Article 4. Mailing of Bids

Bids which are mailed should be addressed to the Purchasing Department at 375 Merrimack St., Lowell, MA. 01852.

Article 5. Bid Forms

It is advisable that bids be submitted on appropriate Bid Forms prepared by the Purchasing Department in order to avoid errors, misconception or ambiguities in reference to the Project Documents.

Article 6. Possible Discrepancies in Specifications

Any inadvertent errors, omissions or discrepancies in the applicable specifications should be brought to the attention of the Purchasing Agent who shall then send written instructions to all bidders in order to effect the correction and clarification of the Project Documents. Failure of any bidder to receive any such addendum shall NOT relieve the bidder from any obligation under his bid as submitted.

Article 7. Waiver Of Informalities, Deviations, Mistakes, And Matters Of Form

The City reserves the right to waive any informalities, deviations, mistakes, and matters of form rather than substance of the bid documents, which can be waived or corrected without prejudice to the Bidder. No officer or agent of the City is authorized to waive this reservation.

Article 8. General Bidding Instructions

Within any context of specifications wherein the item required is defined by using a particular trade name, or by the designation of a specific manufacturer, or by reference to a Dealer's catalogue, the phrase "or approved equal" is not intended to exclude the consideration of other products. Any consideration of an "approved equal", however, will be predicted on the basis that such an item is of equal value in terms of physical attributes, durability, and functional use. The final decision concerning the acceptability of any equipment item shall rest with the Purchasing Agent.

- (a) Any clarification of specifications requested by bidders must be in writing addressed to the Purchasing Agent and received no later than ten (10) working days prior to the bid opening in order to be acknowledged.

- (b) Bidders must state the name of the manufacturer and the material model of each item for which they submit a bid.
- (c) All prices to be firm.
- (d) Bid offerings must be based on INSIDE DELIVERY F.O.B. DESTINATION unless otherwise indicated by the city.
- (e) All bidders must clearly state their terms of sale and maximum delivery time after receipt of order (ARO).
- (f) All bidders must clearly state the terms and conditions of the manufacturer's and/or dealer's warrantee and guarantee.
- (g) Any deviations from specifications must be clearly listed on bid sheet.
- (h) Quantities are for bidding purposes only; the exact quantities to be determined by purchase orders.
- (i) Bidders must submit brochures with their bid.
- (j) All bids must be totaled and where indicated, please list unit cost and the total price of each item. Awards will be made to the lowest responsible bidder who submits a responsive bid which is most advantageous to the City.
- (k) Proposals shall be type-written or written in ink. Erasures on bids will not be considered.
- (l) Conditional bids will not be accepted by the Purchasing Agent.

Article 9. Requirements of City Departments

The actual requirements of the City Departments shall govern the actual amount delivered under a contract to be drawn and entered into between bidder and the City of Lowell, Purchasing Agent and approved by the City Auditor as to the availability of appropriation to pay for the materials and supplies to be furnished under the Contract aforesaid, shall be made a part of said Contract.

Article 10. Discount

In determining the amount of any bid, a discount is in the amount of 1% or more City pay day.

Article 11. Taxes

The City of Lowell is exempt from payments of Federal Excise Taxes and Mass. Sales Tax, and the attention of all bidders is invited to this fact. The City will furnish to successful bidders properly executed tax exemption certificates upon request. Such taxes should not be included in bid prices.

Article 12. Contractor's Responsibility for Specifications

Any measurements, calculations or estimates included herein are believed to be correct, but each bidder should conduct a thorough examination of the project himself, since no allowance will be made because of any inaccuracy that inadvertently appears within the context of the Bid Documents. The failure of any bidder to acquaint himself with conditions as they actually exist shall not relieve him from any obligations and responsibilities inherent within Bid Documents.

Article 13. Unloading, Assembling and Installing of Equipment

The Contractor is responsible for the unloading of any trucking units or vans involved in the delivery of project items, and for overseeing the assembly, placement and installation of all such equipment in areas specified by the Purchasing Agent.

Article 14. Cleaning Up

Following the delivery or installation of any equipment items, the Contractor shall remove from the site all rubbish, waste and surplus materials and the premises shall be left in neat, orderly and broom-clean conditions.

Article 15. Contractor's Liability Insurance

- (a) Workmen's Compensation Insurance: The Contractor shall take out and maintain during the life of this Contract adequate Workmen's Compensation Insurance for all his employees assigned to the project in the manner and to the extent provided for in Chapter 152 of the General Laws and the amendments thereto.

In the event that any employees of the Contractor are engaged in hazardous work at the site of the project and are not protected under Workmen's Compensation Insurance, the Contractor shall be responsible for providing sufficient insurance to cover such employees.

- (b) Public Liability Insurance: The Contractor shall take out and maintain during the life of this Contract (1) Bodily Injury Insurance which includes coverage for accidental death and (2) Property Damage Insurance.

The Contractor further agrees to indemnify and save the Owner harmless from any responsibility arising under the context of the aforesaid paragraphs.

- (c) Approval of Certificate and Evidence of Compliances: A true copy of a properly endorsed Insurance Certificate, issued by a company or companies duly licensed and authorized by the Commonwealth of Massachusetts to write the various types of insurance as specified above, shall be submitted to the Purchasing Agent as evidence of compliance with the requirements of the preceding paragraphs prior to the commencement of any work herein specified.

Article 16. Breach of Contract

If at any time the Contractor is unable to furnish material or services as ordered by the City, the City may order such material or services from such places as are available, and the Contractor shall pay to the City all expense incurred above the contract price.

Article 17. Signatures on the Bid Forms

If a bid is submitted by an individual, the full name and post address of this person shall be designated.

If a bid is submitted by a firm, partnership or corporation, it shall be signed by the person having the legal authority to execute such a document in behalf of the bidder, the individual signing the bid form shall then indicate his title or position in addition to the Full name and address of the firm, partnership or corporation (**certification attached – form D**).

Article 18. Guarantee

The bidder to whom a contract is awarded guarantees to the City of Lowell all equipment, materials and/or workmanship for a period of one (1) year after final inspection and acceptance and shall replace promptly any defective equipment, materials and/or workmanship required without additional cost to the City.

Article 19. Withholding of Contract Award

The Purchasing Agent reserves the right to withhold the awarding of any contract under its jurisdiction when the bidder is unable to furnish satisfactory evidence of adequate ability, experience and/or capital to execute the completion of a project in accordance with the prescribed requirements and specifications.

Article 20. Modifications

This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Contractor and of the City. Any variance from the terms and conditions of this Agreement or any order or other written notification given by either Party to the other that is not duly authorized shall have no force or effect.

Article 21. Change Order

The City may, at any time throughout the Term of the Agreement or any extensions thereof, issue a written Change Order requiring the Contractor to make changes within the general scope of the Agreement that may include additions, modifications, and improvements to the services. A Change Order shall not modify the overall purpose of this Agreement. No change order can exceed twenty-five (25) percent of the total price.

The Contractor may, at any time, propose in writing to the City for acceptance or denial, modifications to the Contract documents, which will benefit the City. The City shall review the Contractor's proposal and may request such modifications. Denial of a proposed modification shall neither provide the Contractor with any basis for a claim for damages nor release the Contractor from contractual responsibilities.

If the Change Order issued by the City causes an increase or decrease in the Contractor's cost to provide the services and/or requires a change to the schedule that, in the City's reasonable discretion, is determined to be necessary, an equitable adjustment will be made and incorporated into this Agreement.

Change Order Notice. Upon receipt of a Change Order issued by the City, the Contractor shall within ten (10) business days of receipt of the Order give written notice (including preliminary cost and time estimates) to the City stating the Change Order to be either an alteration to, deviation from, addition to, or deletion from the Contract. Within thirty (30) days of receipt of the Order or other time period mutually agreed to by the City and the Contractor, the Contractor shall submit a detailed Change Order proposal, which includes the following information:

Description of change and details of work to be done. Detailed cost and pricing data, the cost detail should be comprehensive and readily traceable into the Contractor's accounting records and underlying

supporting documentation. The Contractor's statement of additional time shall include a detailed schedule analysis identifying which schedule activities and key milestones are impacted.

Change Order Authorization. The Contractor shall not proceed with any Change Order work until the City gives written authorization. The City shall not accept any responsibility whatsoever for Change Order work performed by the Contractor without proper authorization by the City. All Change Orders shall be executed in accordance with the terms and conditions of the Contract. All executed Change Orders shall constitute the entire agreement between the City and the Contractor with regard to any and all costs and time extensions related to Change Order work.

Article 22. Samples

The Purchasing Agent may require the submission of samples either before or after the award of a contract, at no charge to the City, in order to ascertain whether or not a product will be suitable for the purpose for which it is intended. If it is specifically stated elsewhere in the bid documents that samples are required, full size samples must be submitted not later than the official BID OPENING. Failure to submit said samples may be regarded as a basis for rejecting a bid. Samples may be impounded until satisfactory completion of the contract. Otherwise all samples must be called for by the bidder within thirty (30) days of the award of contracts or said samples will be presumed abandoned and the Purchasing Agent will dispose of them as he sees fit.

Article 23. Compliance with Laws, By-Laws and Regulations

The Contractor shall keep fully informed and shall comply with the provisions of applicable federal, state, and municipal laws, rules, and regulations that in any manner regulate the Contractor's performance of this Contract and those engaged or employed with the services herein described, other than any such laws, rules and regulations that relate to City's own operations. The Contractor shall indemnify, protect, defend, and save harmless the City and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed upon the City under any such laws, rules, and regulations by any public agency, authority or court having jurisdiction over the parties hereto when the imposition of same is attributable to the failure of the Contractor to keep fully informed and to comply with its obligations in this regard, provided that if any public agency, authority or court seeks to impose such fine, penalty or liability on the City, the City shall promptly notify the Contractor and allow the Contractor, in consultation with the City, to object to and defend such imposition.

Article 24. Permits and Licenses

The Contractor shall secure at his own expense all permits and licenses, pay all necessary charges and provide all notices that are due in connection with the lawful prosecution of the work.

Article 25. Liens

The final payment on any project may be deferred until the Contractor has delivered to the Owner a complete release from all liens arising out of the applicable contract, or receipts covering all labors and materials for which liens could be filed, or a bond that satisfactorily indemnifies the Owner against all possible liens.

Article 26. Contractor's Expenses

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, incidental services and other facilities necessary for the execution and completion of the project. The contractor shall be responsible for royalties and costs associated with patents, trademarks, and copyrights in any way involved in the project. All Garland Roofing products will be purchased separately by the City of Lowell directly from Garland Roofing Products through FAC-27.

Article 27. Payment Schedule

Bills in triplicate for the amount of Materials and Supplies furnished by the successful bidder under the contract to be entered into should be submitted before the first day of the month in which payment is to be made to insure payment on the twentieth day of the month, except that where the time conditioned in the bid for the allowance of discount differs from the above successful bidder agrees to submit bill to the Purchasing Agent in sufficient time for such discount to be taken advantage of by the City which, in any event, shall not be less than ten days from the submission to the Purchasing Agent of such bills.

Article 28. Assignment

Neither the Contract nor any interest herein shall be assigned, pledged or otherwise transferred by the Contractor without the written consent of the City, except in the case of a transfer of all or substantially all of the Contractor's assets provided that all obligations of this Contract are assumed by the controlling entity. If the Contractor makes any such assignment, pledge or other transfer without the written consent of the City, the Contract shall be voidable at the election of the City. The City's consent to any such assignment, pledge or other transfer may impose such additional conditions thereon as may be deemed necessary to ensure the performance of the terms of the Contract by the assignee. Moreover, unless otherwise agreed to in writing by the City, any transfer by the Contractor shall not release the Contractor of its liability under the Contract.

Article 29. No Waiver

None of the provisions of this Agreement, unless otherwise specified, shall be considered waived by either party hereto unless such waiver is in writing and signed by both parties. No such waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

Article 30. Limitation Of Liability

Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than death or personal injury) incurred by the City as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT THE CITY SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

Article 31. Indemnification of the City

The Contractor agrees to indemnify, save harmless, and defend the City and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings ("Claims"), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims ("Liabilities") for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

Article 32. Termination Of Contract**Default Termination.**

The City may, without prejudice to or waiver of any other right or remedy available to it, terminate or suspend this Agreement, in whole or in part, either immediately upon receipt of such notice by the Contractor or upon written notice to the Contractor seven (7) days prior to the effective date of such termination or suspension for an "Event of Default" as defined hereunder.

Termination for Convenience.

The City may, in its sole discretion, terminate all or any portion of this Agreement or the work required hereunder, at any time for its convenience and/or for any reason by giving written notice to the Contractor thirty (30) calendar days prior to the effective date of termination or such other period as is mutually agreed upon in advance by the parties. If the Contractor is not in default or in breach of any material term or condition of this Agreement, the Contractor shall be paid its reasonable, proper and verifiable. Such payment shall be the Contractor's sole and exclusive remedy for any Termination for Convenience, and upon such payment by the City to the Contractor, the City shall have no further obligation to the Contractor. The City shall not be responsible for the Contractor's anticipatory profits or overhead costs attributable to unperformed work.

Article 33. Force Majeure

Neither party hereto shall be in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by a Force Majeure Event. Should

Contractor's services be delayed by a Force Majeure Event, the Agreement and Contractor's schedule for completion of tasks affected by such delay shall be extended. "Force Majeure" or a "Force Majeure Event" is an event beyond the control of a party and not due to the act or omission of such party, which materially and adversely affects the party's ability to meet its obligations under the Agreement and which event or the effects of the event would not have been anticipated and avoided by a prudent party acting commercially reasonably. Force Majeure Events may include, but are not limited to, Acts of God; acts or failures to act of government agencies and delays related to the City in either their contractual, sovereign or regulatory capacities; fires, floods, earthquakes, epidemics quarantines, strikes, wars, riots, terrorism, interruptions of energy supply or civil disturbances. Within thirty (30) calendar days after the last day of delay, the Contractor shall furnish the City with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Agreement references, and the measures taken to prevent or minimize the delay. Upon review of the detailed information concerning the delay, the City shall assess the impact the delay may have on price and schedule of the work and modify the Contract as needed.

Article 34. Mutual General Representation and Warranties

Corporate Power. Each party represents (a) that it is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and (b) that it has full corporate power to own, lease, and operate its properties and assets, to conduct its business as such business is currently being conducted, and to consummate the transactions contemplated by this Agreement.

Authority. Each party represents that this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding Agreement, enforceable against such party in accordance with this Agreement's terms, subject to the effect of bankruptcy, insolvency, moratorium and other laws now or hereafter in effect relating to and affecting the rights of creditors generally and to equitable principles of general application.

No Breaches. Each party represents that neither the execution nor delivery of this Agreement, nor the consummation of any of the transactions contemplated herein, will result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, or material agreement (subject to any applicable required consent), order, law, rule or regulation to which it is a party or which is otherwise applicable to it.

Article 35. Conflict of Interest

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. Therefore, it is the responsibility of Contractor to ensure compliance with the Commonwealth's Conflict of Interest Laws and avoid any conduct which might result in or give the appearance of creating for Board members, officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct which might result in a Board member, officer or employee failing to comply with G.L., c. 268A. Non-compliance with these Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of the City by the Bidder, Bidder's employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of the City; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of the City; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify the City's Chief Procurement Officer in writing and fully disclose all circumstances thereof. The City reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If the City does not grant an exception, the Contractor shall, within ten (10) days of written notice from the City, take all action necessary to comply with the terms stated herein.

The Bidder shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws (certification attached – form A).

Article 36. Collusion

The Bidder shall sign an affidavit stating that Bidder understands that any bid submitted to the City is made without collusion with any other Bidder submitting a bid on the same commodity/service, and is in all respects fair and without fraud (certification attached – form C).

Article 37. Award or Rejection of Bids

The contract will be awarded to the lowest responsible and responsive bidder complying with the provision of the invitation provided the bid price is reasonable and it is to the interest of the city to accept it. The Purchasing Agent reserves the right to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the City. The Purchasing Agent also reserves the right to reject the bid of bidder who has previously failed to perform properly or complete on time contracts of similar nature or a bid of a bidder who investigation shows is not in a position to perform the contract.

In determining responsibility the following qualifications, in addition to price will be considered by the Purchasing Agent

- (a) The ability, capacity and skill of the bidder to perform the service required within the specified time.
- (b) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (c) The quality of performance of previous contracts or services.
- (d) The previous and existing compliance by the bidder with laws and ordinances relating to previous contracts with the City and to the bidder's employment practices.
- (e) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.
- (f) The quality, availability and adaptability of the supplies, or contractual services to the particular use required.
- (g) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- (h) Whether the bidder is in arrears to the City in debt on contract or is a defaulter on surety to the City or whether the bidder's taxes or assessments are delinquent.
- (i) The resale value of the subject of the contract.
- (j) Such other information as may be secured by the Purchasing Agent having a bearing on the decision to make the award.

In determining a bidder's responsiveness, the Purchasing Agent shall consider material deviations from the advertised specifications which materially affect price, quantity, quality or limit the bidder's liability.

Article 38. Purchases of all Types of Vehicles

Good and clear title to each vehicle must be made to the City of Lowell at time of delivery of said vehicle.

Article 39. Transaction by Third Parties

The City of Lowell will reject any and all bids for the purchase or lease purchase of equipment if any third party has or intends to have a security interest in said equipment.

The City will further reject any and all bids which would require the City to sign any agreement or agreements concerning financing of the transaction by third parties.

CONFLICT OF INTEREST CERTIFICATION

The undersigned hereby certifies that the Bidder shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with the City's Conflict of Interest terms stated in Article 33 of these Contract Documents.

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

ACKNOWLEDGEMENT OF ADDENDA

The Bidder acknowledges all addenda.

ADDENDA NUMBER

DATE ISSUED

AFFIDAVIT OF NON-COLLUSION

It shall be understood that any bid submitted to the City is made without collusion with any other bidder submitting a bid on the same commodity/service, and is in all respects fair and without fraud.

STATE OF: _____ Date: _____

COUNTY OF: _____ S.S. _____

The undersigned being duly sworn, deposes and says that he/she is the

(Sole Owner; Partner, President, Treasurer,
or Other Duty Authorized Official of a Corporation)

of _____
(Name of Firm as Appearing in Submitted Proposal)

and works in _____
(City/Town)

and certifies under penalties of perjury that this proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____, 20 ____

Notary Public: _____ My commission expires: _____

IN WITNESS WHEREOF, the undersigned certifies, under the pains and penalties of perjury that:

1. It is in compliance with all of the provisions, and shall remain in compliance with the provisions for the life of any Contract resulting from this solicitation. That the bidder is qualified to perform any such Contract and possess, or shall obtain, all requisite licenses and permits to complete performance; shall maintain all unemployment, workers' compensation, professional and personal liability insurance policies sufficient to cover its performance under any such Contract; and shall comply with relevant prevailing wage rates and unemployment laws.
2. To the best of its knowledge and belief has paid all local taxes, tax titles, utilities, motor vehicle excise taxes, water and wastewater bills to the City of Lowell as required by law.
3. To the best of its knowledge and belief has filed all State tax returns and paid all State taxes required by law, and has complied with reporting of employees and contractors, and withholding and remitting of child support (MGL c.62C, s.49A).
4. Pursuant to MGL c.30B s.10 (or c.30 s.39M), this bid or proposal has been made in good faith and without collusion or fraud with any other person. As used in this paragraph, "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of Person Signing Bid or Proposal

BY: Corporate Officer (Type/Print)

Corporate Name (Full Business Name)

BY: Corporate Officer (Sign)

Social Security or Federal Tax ID#
Business (DBA)

State of Incorporation/City of
Registration

Approval of a contract, or other agreement, will not be granted unless the applicant signs this certification form. Your Social Security number or Federal Tax Identification number will be furnished to the Massachusetts Department of Revenue (DOR) to determine whether you have met tax filing or tax payment obligations. The City of Lowell is required to furnish a list to the DOR at the end of its fiscal year, showing the vendors to whom more than \$5,000 is paid during the twelve months, ending June 30. Providers who fail to correct their non-filing or delinquency, will not have a contract or other agreement issued or extended. This request is made under the authority of Massachusetts General Laws, c.62C, s.49A.

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of (insert name of corporation)

Held _____ at which all the Directors

Were _____

Present or waived notice, it was voted that _____
(name)

_____ Of this corporation, be it he or she, hereby is (corp. office)

authorized to execute bid documents, contracts and bonds in the name and on (corp. office)

behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any bid

document or contract or obligation in this corporation's name on its behalf under seal of the

corporation, shall be valid and binding upon this corporation.

ATTEST: _____

(Clerk or secretary)

Place of Business: _____

I hereby certify that I am the clerk/secretary of the _____
(Name of Corporation)

And that _____
(Name)

is the duly elected _____ of said corporation,

and _____
(Corp. office)

that the above vote has not been amended or rescinded and remains in full force and effect as of
the date set forth below.

ATTEST _____
(Clerk or secretary)

Date:*

* This date must be on or before the date of the Contract

BASIS OF AWARD

IFB 16-40

In accordance with the Specifications, and under the terms and conditions mentioned above, I (We) hereby offer to furnish and deliver to departments described above the following materials which shall in all respects meet the attached specifications, as required during the terms mentioned above for the following prices:

QTY	ITEM #	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
60	22003	Handle, Yellow Class III X2		
70	22012	TPPM Battery Pack X2/X26P		
170	22501	Holster Blackhawk X2 Right		
30	22504	Holster Blackhawk X2 Left		
600	22150	Cartridge Performance Smart 15'		
1	22013	Kit, Dataport Download USB		
240	22151	Cartridge Performance Smart 25'		
60	22014	4 Year X2 Warranty		

GRAND TOTAL _____

IN WORDS _____

DELIVERY IN DAYS _____

MANUFACTURER _____

Signature of Bidder _____

Print Name and Title _____

Company Name and Address _____

Telephone Number _____

Email Address _____

FURTHER REQUIREMENTS

All Conducted Electrical Weapons (CEW) products offered must be approved for use by the State of Massachusetts

The brand names, makes, item numbers, descriptions, names of manufacturers that are stated in this IFB, are for the purpose of establishing a grade, quality of material and the required features of the products solicited.

Taser International Inc is the manufacturer for the items and descriptions contained within this IFB and only the Taser International Inc products are the preapproved.

All bidders must be an authorized distributors and qualified suppliers for the products offered in response to this IFB